

HB89CHOC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 CR 667 (GHW)

6 BENJAMIN CHOW,

7 Defendant.  
-----x

8 New York, N.Y.  
9 November 8, 2017  
10 11:37 a.m.

12 Before:

13 HON. GREGORY H. WOODS

14 District Judge

15 APPEARANCES

16 JOON H. KIM  
17 Acting United States Attorney for the  
18 Southern District of New York  
19 ELISHA KOBRE  
20 AMANDA KRAMER  
21 Assistant United States Attorneys

22 MILBANK TWEED  
23 Attorneys for Defendant  
24 GEORGE CANELLOS  
25 KATHERINE GOLDSTEIN  
ADAM FEE

HB89CHOC

1 (In open court; case called)

2 MR. KOBRE: Good afternoon, your Honor.

3 Elisha Kobre and Amanda Kramer for the government.

4 THE COURT: Thank you very much.

5 MS. KRAMER: Good morning, your Honor.

6 MR. CANELLOS: Good afternoon, your Honor. George  
7 Canellos along with Katherine Goldstein and Adam Fee from  
8 Milbank Tweed for defendant Ben Chow.

9 THE COURT: Good. Thank you very much. Good morning.  
10 Thank you for being here.

11 So, let's proceed. Mr. Chow, you've been named in a  
12 14-count indictment which is numbered 17 CR 667.

13 You can remain seated until I ask you to stand. Thank  
14 you very much, Mr. Chow.

15 Mr. Chow, you've been named in a 14-count indictment  
16 which is numbered 17 CR 667. The case has been assigned to me.  
17 The purpose of this proceeding is to do a number of things.  
18 First, to make sure that you have a copy of the indictment;  
19 second, to inform you of the charges against you; third, to  
20 take your plea; fourth to discuss what's going to happen next  
21 in this case has a whole.

22 Now, Mr. Chow, I understand that you've already had an  
23 initial appearance before a magistrate judge who has informed  
24 you of certain of your rights. Because of the importance of  
25 your right to remain silent, I'm going to review that right for

HB89CHOC

1 you here now.

2                   Mr. Chow, you have the right to remain silent. You do  
3 not have to say anything to anyone. If you give up that right  
4 and make a statement, the prosecutor can use everything that  
5 you say against you. Therefore, I strongly suggest that you  
6 not say anything to anyone unless you and your counsel decide  
7 that it is in your best interests to do so. If you've already  
8 given a statement, you don't have to say anything else. If you  
9 decide to go ahead and make a statement, you have the right to  
10 stop at any time.

11                   Do you understand your right to remain silent?

12                   THE DEFENDANT: Yes, your Honor.

13                   THE COURT: Thank you very much.

14                   Good. So I understand that Mr. Fee, Mr. Canellos, and  
15 Ms. Goldstein are representing you in these proceedings; is  
16 that correct?

17                   THE DEFENDANT: Yes, your Honor.

18                   THE COURT: Thank you.

19                   Now I'm going to ask you a couple of questions now if  
20 I can. If you don't understand any of these, Mr. Chow, or if  
21 you want to consult with your lawyer at any time for any  
22 reason, please just let me know and I will give you any time  
23 that you wish to confer.

24                   So, Mr. Chow, can you tell me your full name.

25                   THE DEFENDANT: Benjamin Bin Chow.

HB89CHOC

1                   THE COURT: Thank you.

2                   Mr. Chow, are you a United States citizen?

3                   THE DEFENDANT: Yes.

4                   THE COURT: Thank you.

5                   Mr. Chow, do you understand what's happening in this  
6 proceeding?

7                   THE DEFENDANT: Yes, your Honor.

8                   THE COURT: Thank you.

9                   Mr. Chow, have you seen a copy of the indictment in  
10 this case?

11                  THE DEFENDANT: Yes, your Honor.

12                  THE COURT: Thank you.

13                  Counsel have you had the opportunity to review the  
14 indictment and to discuss it with Mr. Chow?

15                  MR. CANELLOS: Yes, we have, very extensively your  
16 Honor.

17                  THE COURT: Can I turn to the United States, please.

18                  Would one of you please summarize the charges on which the  
19 defendant is being arraigned today.

20                  MR. KOBRE: Yes, your Honor. There are 14 counts.

21                  THE COURT: I'm sorry could I ask you to stand,  
22 please, counsel.

23                  MR. KOBRE: I'm sorry, your Honor. I use a  
24 wheelchair.

25                  THE COURT: I'm sorry. I didn't see that.

HB89CHOC

1                   MR. KOBRE: That's okay. And your Honor is not the  
2 first one that that's happened with, so.

3                   Your Honor the indictment contains 14 counts.

4                   Count One is conspiracy to commit securities fraud.

5                   Counts Two through Thirteen are counts of security  
6 fraud under Title 15.

7                   And the final count is a count of securities fraud  
8 under Title 18.

9                   The charges in the indictment arise from an insider's  
10 trading scheme conducted by the defendant together with a  
11 coconspirator relating to a merger or acquisition event with a  
12 public company by the name of Lattice.

13                  And the indictment essentially alleges that the  
14 defendant provided material nonpublic information to a friend  
15 and associate of his regarding that merger acquisition prior to  
16 it being publicly announced.

17                  The defendant was governed by non-- various  
18 nondisclosure agreements which made clear that information  
19 about the proposed negotiations with respect to the merger and  
20 acquisition were to be kept confidential. Those agreements  
21 were between the -- were signed by the defendant in his  
22 capacity as the managing partner and director of two private  
23 equity funds that were the ones negotiating to purchase the  
24 public company Lattice, and that is what the charges in the  
25 indictment arise from.

HB89CHOC

1                   THE COURT: Thank you.

2                   Mr. Chow, you have the right for me to read the  
3 indictment to you out loud here on the record and I'd be happy  
4 to do that. You can also waive that right.

5                   Would you like for me to read the indictment to you on  
6 the record?

7                   THE DEFENDANT: I would like to waive that right, your  
8 Honor.

9                   THE COURT: Counsel, do you waive formal reading of  
10 the indictment?

11                  MR. CANELLOS: Yes, your Honor.

12                  THE COURT: Counsel and Mr. Chow, can I ask you to  
13 please stand.

14                  Mr. Chow, do you understand what it is that you have  
15 been charged with?

16                  THE DEFENDANT: Yes, your Honor.

17                  THE COURT: Thank you.

18                  Count One charges that from at least in or about  
19 March 2016 through in about -- in or about November 2016, in  
20 the Southern District of New York and elsewhere, you and  
21 others, known and unknown, willfully and knowingly did combine,  
22 conspire, confederate and agree together and with each other to  
23 commit offenses against the United States, to wit, securities  
24 fraud in violation of Title 18 U.S.C. Section 371.

25                  How do you plead to this count?

HB89CHOC

1                   THE DEFENDANT: Not guilty, your Honor.

2                   THE COURT: Thank you.

3                   I'm going to address each of Counts Two through  
4 Thirteen collectively. Each of Counts Two Through Thirteen  
5 charge that from at least in or about July 2016 through in or  
6 about November 2016, in the Southern District of New York and  
7 elsewhere, you willfully and knowingly, directly and  
8 indirectly, by the use of means and instrumentalities of  
9 interstate commerce and of the mails and of facilities of  
10 national securities exchanges, used and employed in connection  
11 with the purchase and sale of securities manipulative and  
12 deceptive devices and contrivances in violation of Title 16  
13 U.S.C. Section 78j(b) and 78ff; Title 17 C.F.R. Sections  
14 240.10b-5 and 240.10b-5-2 and Title 18 U.S.C Section 2. Each  
15 of those counts refers to a specific identified transaction set  
16 forth in page fifteen of the indictment.

17                   Mr. Chow, can I ask you: How do you plead to each of  
18 Counts Two through and including Thirteen?

19                   THE DEFENDANT: Not guilty, your Honor.

20                   THE COURT: Thank you.

21                   Count 14 charges from at least in or about July 2016  
22 through in or about November 2016, in the Southern District of  
23 New York and elsewhere, you knowingly and intentionally  
24 executed a scheme and artifice to:

25                   A. Defraud persons in connection with securities

HB89CHOC

1 registered under Section 12 of the Securities Exchange Act of  
2 1934 and that were required to file reports under Section 15(d)  
3 of the Securities Exchange Act; and.

4 B. Obtained by means of false and fraudulent  
5 pretenses, representations, and promises money and property in  
6 connection with the purchase and sale of securities of an  
7 issuer with a class of securities registered under Section 12  
8 of the Securities Exchange Act of 1934 and that were required  
9 to file reports under Section 15(d) of the Securities Exchange  
10 Act of 1934, all in violation of Title 18 U.S.C. Sections 1348  
11 and 2.

12 How do you plead to this count?

13 THE DEFENDANT: Not guilty, your Honor.

14 THE COURT: Thank you.

15 Mr. Chow, your pleas of not guilty are accepted.  
16 Thank you very much. You can be seated. Thank you.

17 THE DEFENDANT: Thank you, your Honor.

18 THE COURT: So can I turn to the United States. You  
19 described something about the nature of the case to me in your  
20 overview regarding the indictment. What else can you tell me  
21 about the nature of the case?

22 MR. KOBRE: Yes, your Honor. So, again, the defendant  
23 was managing director and managing partner of two private  
24 equity firms. One of them is called -- was called China Reform  
25 Fund. That was initially the defendant was a managing director

HB89CHOC

1 of that private equity fund. And then subsequently he became a  
2 managing partner and cofounder of a different private equity  
3 fund known as Canyon Bridge Capital Partners. Both of those  
4 entities, first China Reform Fund and subsequently Canyon  
5 Bridge, began negotiating with Lattice Semiconductor  
6 Corporation to purchase Lattice Semiconductor Corporation to  
7 acquire it and our understanding is to take it private.

8 And in that context the defendant came into possession  
9 of material nonpublic information, including the fact that  
10 those two private equity funds were, in fact, negotiating to  
11 purchase Lattice as well as details about the negotiations and  
12 how they were going, price terms and other details. And though  
13 the defendant signed as, first as managing director of China  
14 Reform Fund and then subsequently as managing partner of Canyon  
15 Bridge, nondisclosure agreements which specifically said that  
16 the fact of the exploration or of a potential merger or  
17 acquisition would be confidential, would be proprietary  
18 information, and could not be disclosed except under very  
19 limited circumstances which in the government's view do not  
20 apply. And, nonetheless, the defendant disclosed information  
21 about the negotiations, about the fact of the negotiations  
22 between his private equity firms and Lattice to a friend and  
23 business associate who is described in the indictment as CC1.  
24 And that is essentially the charge -- where the charges arise  
25 from.

HB89CHOC

1                   THE COURT: Thank you.

2                   At this time, counsel, do you anticipate filing any  
3 superseding indictments adding defendants or additional  
4 charges?

5                   MR. KOBRE: We do not, your Honor.

6                   THE COURT: Thank you.

7                   So can you tell me, counsel, what the nature is of the  
8 discovery that you anticipate producing to defendant and your  
9 anticipated timeframe in which you'll produce it?

10                  MR. KOBRE: Yes, your Honor.

11                  So, generally speaking, the discovery in this case  
12 will consist of the following. It will consist of data from  
13 the phone of CC1. That phone was seized pursuant to a search  
14 warrant and contains information including the messages, text  
15 messages and voice messages that are described in the criminal  
16 complaint in this case. And the government is going to be  
17 producing a fair amount of data from that phone.

18                  The government is also going to produce, of course,  
19 the warrant that relates to the seizure and the search of that  
20 phone as well as electronic devices that were seized from the  
21 defendant upon his arrest. Those devices, your Honor -- and  
22 there are several of them -- have, all but one, have been  
23 returned to the defendant, the devices themselves. I've had a  
24 conversation with defense counsel who have asked that the  
25 government provide the images that are in the government's

HB89CHOC

1 possession. So we would image those electronic devices, return  
2 them, all but one. Defense has asked for the images. We're  
3 going to provide that once defense gives us a hard drive to  
4 enable us to do that. And we'll obviously provide the warrant,  
5 the search warrant that the government obtained to allow the  
6 search of those devices as well.

7 And then, your Honor, there are records that relate to  
8 the case, brokerage records relating to the trading done by  
9 CC1, records that the government has obtained from the SEC  
10 concerning those -- that trading activity, as well as records  
11 from some of the entities that are involved here; so records  
12 from Canyon Bridge, records from Lattice, and other subpoena  
13 returns in the nature of bank records or records of electronic  
14 accounts maintained by the defendant. That's sort of a summary  
15 of what we expect the discovery to be.

16 Your Honor, we propose that the bulk of the discovery,  
17 basically everything that's in our possession now, that the  
18 government will produce that by a week from this Friday.

19 And, your Honor, I say that to be conservative. But  
20 just to ensure that we can make sure that we have everything  
21 and produce it in a clear way, clear and an organized way for  
22 the defense, we would produce those materials a week from this  
23 Friday with two -- the two qualifications, your Honor, that we  
24 would add to that is: First, with respect to Mr. -- the images  
25 that I mentioned before, Mr. Chow's electronics, that could

HB89CHOC

1 take a few additional days to burn. Apparently, it's a lot of  
2 material. There's a lot of data. As soon as we get -- defense  
3 counsel has asked me for what size of a hard drive to -- we  
4 need in order to get that material to them. We're to let them  
5 know that today or tomorrow at the latest. They get us the  
6 hard drive and we'll facilitate that. But that may extend a  
7 bit beyond the end of Friday, just in terms of whether it will  
8 actually take that long for the material to burn.

9                   And then the second sort of qualification is, your  
10 Honor, there are outstanding subpoena requests for records in  
11 this case. And so those items are not in the government's  
12 possession at this point. We're pressing for the records -- to  
13 get the records as soon as possible but -- and we obviously  
14 will just turn them over as soon as we get them in or are able  
15 to make sure that they are proper Rule 16 discovery or  
16 otherwise appropriate discovery. But we just don't have those.  
17 And that may extend beyond the proposed discovery deadline.

18                   THE COURT: Thank you very much.

19                   Have you discussed those proposals with counsel for  
20 defendant?

21                   MR. KOBRE: Your Honor, we have had discussions and  
22 I've let defense counsel know that that's sort of our general  
23 plan. I would also just inform your Honor that we've also sent  
24 over to defense counsel a proposed protective order since some  
25 of the evidence in this case will include personal identifying

HB89CHOC

1 information of individuals. And we sent that over to defense  
2 counsel yesterday. I think defense counsel may have some  
3 proposed edits to it. And then hopefully we'll be able to  
4 reach an agreement on that and submit it for your Honor to  
5 enter that order.

6 THE COURT: Thank you very much.

7 Given that description of the scope of discovery, I'd  
8 like to turn to counsel for Mr. Chow to ask how long you think  
9 you will need in order to review the materials.

10 MR. CANELLOS: Your Honor, if the bulk of discovery  
11 comes to us next week, I think we could review it very  
12 expeditiously. There's a little bit of a challenge in  
13 anticipating how much time it will take because it's electronic  
14 and it's very small but very small devices can have a lot of  
15 information. But I think we have a general sense of what kind  
16 of information we're going to receive. We're poised to review  
17 it very quickly.

18 THE COURT: Good. Thank you.

19 So first, I'm going to ask United States to complete  
20 the production as it described by November 17. I appreciate  
21 the two caveats described by you, namely with respect to the  
22 burning of the image to devices and the fact that additional  
23 information may come to the government's possession as a result  
24 of these pending subpoena requests.

25 What's the parties' views regarding the appropriate

HB89CHOC

1 next steps in the case?

2 I understand defendant's counsel will be prepared to  
3 review these materials expeditiously. What's your view  
4 regarding the appropriate next step for us?

5 MR. CANELLOS: Would you like us to start, your Honor?

6 THE COURT: Please.

7 MR. CANELLOS: Sure. So the defendant was arrested  
8 here on a complaint that was under seal several weeks ago. We  
9 have had a lot of discussions with the government about this  
10 case preindictment. So I think more so than most cases we sort  
11 of all know where we're going. We know there's not going to be  
12 a disposition of the case. We think there are very, very  
13 significant legal issues here pertaining to what the defendant  
14 was lawfully at liberty to share pertaining to the personal  
15 benefit test, which has been a controversial issue in this  
16 circuit since the Newman decision, more recently the Salman  
17 decision, in the Supreme Court, and very recently the Martoma  
18 decision. This case presents a lot of legal issues under those  
19 cases, also under the intent-to-benefit requirement with  
20 insider trading.

21 But most of these legal issues, we think, are really  
22 issues -- they're instructional issues and they are legal  
23 issues for trial or posttrial. We don't really think that the  
24 most thorny legal issues presented in this case are ones for  
25 pretrial motions.

HB89CHOC

1                   We do anticipate that we are going to have some  
2 disputes with regard to discovery. It may be that we're able  
3 to resolve them. In particular, they revolve around the  
4 following, your Honor.

5                   The SEC has a parallel investigation of this matter.  
6 And they, in fact, brought a civil complaint and have a pending  
7 action against the alleged coconspirator who is not in the  
8 jurisdiction. So they have a parallel investigation and, as we  
9 understand it, the government does not propose to provide us  
10 with all of the discovery that the SEC has developed in their  
11 investigation of the alleged coconspirator. And there are --  
12 when there's a parallel investigation, we believe that there  
13 are some well founded Brady and Giglio motions and discovery  
14 motions directed at discovery of the SEC's files. And it may  
15 be that we can reach agreement with the government and with the  
16 SEC on that. But that's a potential issue out there.

17                  Mr. Kobre also mentioned that there's one piece of  
18 hardware that was seized from the defendant whom the -- at  
19 which the government does not propose to return in discovery.  
20 And my understanding is that the government has seized a  
21 particular iPad and that due to issues that the government has  
22 with encryption and the like with Apple or whoever the  
23 manufacturer of the iPad is -- I think it's Apple -- that they  
24 have not been able to themselves access any information on that  
25 iPad pursuant to a search warrant that they may have.

HB89CHOC

1                   Obviously, we feel like if they have a search warrant  
2 and they can execute it, they're entitled to do so. If they  
3 can't execute a search warrant and it's now expired we should  
4 have that back. We may have a disagreement with the government  
5 on that. But that's another discovery issue.

6                   With regard to -- since we know this is going to be a  
7 trial, we also are very cognizant of the following. Mr. Chow,  
8 who is the head of a major private equity fund in America and  
9 has had no issues with the law whatsoever is, needless to say,  
10 absolutely hobbled by what's happened to him here. He'd like  
11 to go on with his life and his chances of doing so really do  
12 require an expeditious day in court.

13                  We don't wish to create any artificial deadlines, and  
14 we want to find a time that, for a trial that works for the  
15 court and works for the government but that's in the near term  
16 and serves the important interests of Mr. Chow in a speedy  
17 trial.

18                  We've been discussing with the government the  
19 possibility of setting a trial date and kind of backing into  
20 it. And we were thinking something in the spring of next year  
21 which allows us to get to trial reasonably soon and gives both  
22 the government and the defense adequate time to prepare.

23                  This is not a cooperator case. It's not really even a  
24 witness case. We expect the government will have a few  
25 witnesses who will largely speak to uncontested facts. And the

HB89CHOC

1 rest will be documents and a few tape recordings and texts. So  
2 it's pretty simple.

3 Defense case we expect we'll have, but no more than a  
4 week.

5 And so we were thinking maybe the right course here  
6 would be to pick a trial date and back into it.

7 THE COURT: Thank you.

8 Let me hear from the United States.

9 MR. KOBRE: Sure. Your Honor, with respect to the --  
10 just first with respect to the two discovery issues raised by  
11 defense counsel, we've had some just preliminary conversations  
12 with defense counsel. And so I don't think those conversations  
13 are done and, as defense counsel says, it may be something that  
14 ultimately we are able to resolve. So I don't know that I need  
15 to say much more on it right now unless your Honor is  
16 interested in sort of our general response at this point.

17 THE COURT: I don't think I need to hear more about  
18 that at this time. I think the parties are able to resolve  
19 those issues amicably.

20 MR. KOBRE: Thank you, your Honor.

21 With respect to a trial date, the government is  
22 certainly amenable to the setting of a trial date and also  
23 wishes to accommodate defendant's right to a speedy trial.  
24 We've had some preliminary conversations about potential dates.  
25 Myself and Ms. Kramer do have some trials that I think are in

HB89CHOC

1 April and maybe extending into May. So we would actually  
2 propose, your Honor -- well, your Honor, I think from the  
3 government's perspective we could -- we're obviously ready to  
4 go to trial whenever the Court sets a date. But if I could --  
5 if I might just have a moment.

6 THE COURT: Please. Take your time.

7 While you're doing that. Just a couple of notes. I'm  
8 looking at my schedule as we're speaking. I have a two-week  
9 trial in March. And so I think that I'm looking at April as  
10 the most likely month in which I could do a trial in the  
11 spring. Starting on April 30 I have the U.S. v. Harrington and  
12 Reichberg trial which the parties have told me they anticipate  
13 will last six to eight weeks.

14 So assuming that that estimate is accurate, it may be  
15 that the best opportunity for us to try this case in the spring  
16 would be to do it sometime in April. And that may put  
17 pressure, Mr. Kobre and Ms. Kramer on your trial schedules in  
18 April. And I'd be interested in hearing how flexible you can  
19 be.

20 MR. KOBRE: Thank you, your Honor.

21 Just one moment.

22 THE COURT: Thank you.

23 (Pause)

24 THE COURT: Also counsel for the United States as  
25 you're thinking about this I'd be interested in hearing what

HB89CHOC

1 you anticipate the duration of the trial will be.

2 MR. KOBRE: Yes, Judge.

3 (Pause)

4 MR. KOBRE: So, your Honor, apologies for the delay.

5 THE COURT: Not a problem.

6 MR. KOBRE: It does -- mid-April does present issues  
7 for the government and the reason is, your Honor, Passover is  
8 the last week I think of -- is early April and it would be  
9 difficult to prepare for the trial in less than a week or two  
10 weeks.

11 THE COURT: Thank you. I was actually going to  
12 propose that we would begin on -- we might have to begin on,  
13 depending on your estimate regarding the length of the trial,  
14 on the second of April. I can clear my schedule to make that  
15 week and most of the following week available. I have  
16 conflicts on the 12<sup>th</sup> and 13<sup>th</sup> when I couldn't sit. And  
17 then I could free the week of the 16<sup>th</sup> if this is  
18 approximately a three-week trial.

19 MR. KOBRE: Your Honor, I apologize. Passover begins  
20 on April -- on March 31 and it basically is the first week, the  
21 entirety of the first week of April. And then, your Honor,  
22 there is Ms. Kramer has a trial that begins on April 30 which  
23 is a four-week trial which she does need some time to prepare  
24 for.

25 THE COURT: Thank you. Understood.

HB89CHOC

1                   MR. KOBRE: With respect to the length of the trial,  
2 your Honor.

3                   THE COURT: Yes.

4                   MR. KOBRE: So we think that the government's case  
5 will be approximately a week. It sounded from defense counsel  
6 that they may have up to a week. So approximately a two-week  
7 trial, maybe give or take a few days.

8                   MR. CANELLOS: Would that allow for April 9, the  
9 competing schedules allow for a trial on April 9? Any of the  
10 dates that your Honor has referenced would be fine for the  
11 defense and, obviously, if we could avoid the first week of  
12 April, we'd like to accommodate those who are observant. So  
13 would April 9 allow your Honor as well as the government a  
14 window of opportunity?

15                  THE COURT: Thank you. It would certainly work for  
16 the Court with the caveat, as I said, that I won't be able to  
17 sit at all on the 12<sup>th</sup> or 13th. But we could try the case  
18 the week of the 9<sup>th</sup>, the 16<sup>th</sup>, and the 23rd. And it may be  
19 that those would be the Court's preferred days to proceed given  
20 Mr. Chow's interest in taking this case to trial promptly with  
21 apologies, particularly with respect to the potential  
22 interference with the observance, but I understand it not to  
23 directly conflict, and also the understand the potential impact  
24 on Ms. Kramer's trial.

25                  So please tell me, counsel, if you can accommodate a

HB89CHOC

1 trial for Mr. Chow starting the 9<sup>th</sup>.

2 MR. KOBRE: Your Honor, just to be forthright it would  
3 be extremely difficult. I'm going to be out of the office and  
4 just really unable to prepare at all for many of those days.

5 If it was the 16<sup>th</sup>, your Honor -- oh, but that would  
6 actually -- that would create even more of a problem for  
7 Ms. Kramer. So it really would be --

8 THE COURT: Could we front load more of the work. So,  
9 for example, I'd be happy to have our final pretrial conference  
10 sooner than one customarily would so that we can complete our  
11 work on motions in limine and voir dire and the like and make  
12 good progress on jury instructions in March so that the -- a  
13 lot of the pretrial work would be done.

14 As I understand it from defendant's position, there's  
15 not going to be a disposition here. So front loading that work  
16 is something that I'd be happy to do if it takes the pressure  
17 off of the high holiday week and would allow us to begin a  
18 trial on the 9<sup>th</sup>.

19 MR. KOBRE: Can I just have one moment.

20 THE COURT: Please. Take your time.

21 (Pause)

22 MR. KOBRE: Thank you, your Honor, for that time.

23 So would it be possible to -- just trying to eek out  
24 another day or so of being able to prepare for trial, to pick a  
25 jury on the 10<sup>th</sup> and begin hearing testimony on the 11<sup>th</sup>?

HB89CHOC

1                   THE COURT: My concern about that, unfortunately, is  
2 my immutable conflict on the 12<sup>th</sup> and 13<sup>th</sup>. So it wouldn't  
3 give us much time to get work done that week.

4                   MR. KOBRE: Just one more moment your Honor. I'm  
5 sorry.

6                   THE COURT: Not a problem.

7                   (Pause)

8                   I'll also say one other thing which is I have a trial  
9 scheduled for the first two weeks in February that are civil  
10 trials so I could theoretically move those if that would be  
11 helpful and we can't make April work. It seems to me that  
12 April would work best otherwise, at least for defense counsel  
13 as I understand the proposal.

14                  MR. KOBRE: Your Honor can we propose, again  
15 recognizing that the 12<sup>th</sup> and the 13<sup>th</sup> your Honor would not  
16 be sitting, but could we start on the trial on the 10<sup>th</sup> and  
17 this way at least we get two days, if we get the testimony on  
18 the 10<sup>th</sup>, then great, and at least that will give one  
19 additional day?

20                  THE COURT: As opposed to the 9<sup>th</sup>?

21                  MR. KOBRE: Correct, your Honor.

22                  THE COURT: Let me hear counsel for defendant's views  
23 regarding that proposal.

24                  First let me ask everybody to make sure that you think  
25 that we'll have enough time, assuming that the government's

HB89CHOC

1 case, as they anticipate, and the defense has approximately a  
2 week. As I say, I've got another trial that begins on the  
3 30<sup>th</sup> of April which is the conflict at the back end. And  
4 I'll say that that's part of my concern about starting on the  
5 9<sup>th</sup>.

6 But with that said, counsel for defendant, what's your  
7 view regarding the government's proposal?

8 MR. CANELLOS: So either the 9<sup>th</sup> or the 10<sup>th</sup> of  
9 April would be fine as a start date. And given -- I recognize  
10 there's two blackout dates in the -- that come later, but still  
11 with three weeks plus a couple of blackout dates, I think we  
12 feel pretty confident that both the government's and the  
13 defense cases could be completed.

14 THE COURT: Thank you.

15 Yes, counsel.

16 MR. KOBRE: I'm sorry, your Honor. We may have one  
17 potential additional alternative proposal.

18 THE COURT: Proceed.

19 MR. KOBRE: Just 30 more seconds.

20 (Pause)

21 MR. KOBRE: Your Honor, and I apologize if -- there's  
22 a lot of dates flying around here. So I apologize if this is  
23 something that that your Honor has said wouldn't work for the  
24 Court. But with March 19<sup>th</sup> work? That would give us -- that  
25 would get the trial in before Passover and would work for

HB89CHOC

1 Ms. Kramer and wouldn't push her to have little time -- fairly  
2 little time to prepare for her May 30 trial -- I'm sorry,  
3 April 30.

4 THE COURT: Passover is the week of the second?

5 MR. KOBRE: It is.

6 THE COURT: Thank you. Would that give enough time,  
7 given the defense's anticipation, that they'll have a week of  
8 defense?

9 MR. CANELLOS: That's the only consideration, your  
10 Honor, that it's a really, really tight two weeks. Jury  
11 deliberations could go on. But picking a jury too, it includes  
12 picking the jury.

13 MR. KOBRE: Your Honor, I think that would be fine.  
14 If the concern is for the Jewish holiday, the Jewish -- the  
15 beginning of the Jewish holiday is the Saturday and Sunday. So  
16 I would be able to attend in court on Monday or Tuesday should  
17 it spillover.

18 THE COURT: Monday or Tuesday, the second or third?

19 MR. KOBRE: Correct, your Honor. The Jewish holiday,  
20 it kind of comes in two parts. There's two days of sort of an  
21 observance where I can't participate, and then a few days where  
22 I can, and then a few days where I can't again. So that's sort  
23 of the consideration. It turns out Saturday and Sunday, the  
24 1st -- I'm sorry, the 31<sup>st</sup> and the 1st are days when I won't  
25 be able to be involved; but the 2<sup>nd</sup>, the 3<sup>rd</sup>, and 4<sup>th</sup> I can.

HB89CHOC

1                   THE COURT: Thank you.

2                   I unfortunately have another conflict those two weeks,  
3 the 19<sup>th</sup> and the 26<sup>th</sup>.

4                   What I'm going to do as a result is I'm going to  
5 schedule trial to begin on the 9<sup>th</sup> of April with apologies.  
6 I will, however, after this conference see what I can do to  
7 change my schedule for the weeks of the 19<sup>th</sup> and 26<sup>th</sup>. I  
8 can't make any promises. But if I can adjust my schedule for  
9 those weeks, I will. And if I can't I'll simply issue an order  
10 setting the trial for the 19<sup>th</sup>. Otherwise, I'm going to ask  
11 the parties to be prepared to proceed to select a jury  
12 beginning on the 9<sup>th</sup>.

13                  I will set a final pretrial conference for sometime  
14 earlier in the month of March, earlier than is customary, so  
15 that we can front load as much of the labor preparing for trial  
16 as we can and push it out of the month of April and, of course,  
17 the parties are free to take their time with their witnesses to  
18 prepare for trial at any time. You need not do that  
19 immediately before trial.

20                  So I'll set down April 9<sup>th</sup> as the date on which we  
21 will begin. We will need to be efficient. But I think that we  
22 can do it if the parties are focused.

23                  Again, I will try to see if I can change my schedule  
24 for the weeks of the 19<sup>th</sup> and the 26<sup>th</sup> but I'm making no  
25 promises.

HB89CHOC

1 MR. KOBRE: Thank you very much.

2 THE COURT: Good. I'm sorry that I couldn't be more  
3 accommodating but I do appreciate Mr. Chow's desire to get to  
4 trial promptly and his right to get to trial promptly.

5 MR. CANELLOS: Your Honor, to -- I think where we have  
6 come to rest is just fine with us. For a variety of scheduling  
7 reasons on our end, the 19<sup>th</sup> and the 26<sup>th</sup> wouldn't be  
8 ideal, but if there were no alternatives we would find a way  
9 also to try to accommodate the Court. But if we can work the  
10 April 9, I think it works for everyone's schedules and it  
11 should accommodate enough time for the trial.

12 THE COURT: Good. Thank you.

13 So let's plan with that in mind.

14 So let me propose this. As I understand it, we don't  
15 know at this time whether or not there are likely to be motions  
16 that require a hearing. From what I've heard from you,  
17 counsel, at this point in time it does not sound as though  
18 there will be.

19 That said, what I would like to do is I will set a  
20 schedule for any motions when I get back to chambers backsliding  
21 from the April 9<sup>th</sup> date.

22 I'll also set a final pretrial conference date  
23 sometime in early or mid-March.

24 If you all want to have another conference in the  
25 interim, I'd be happy to accommodate that but I think that I

HB89CHOC

1 can set a schedule by written order after today's conference  
2 that will build in time for motions and a potential hearing.

3 And I'll also direct you to my individual rules with  
4 respect to pretrial materials that might obviate the need for  
5 an additional hearing that brings Mr. Chow here before trial.  
6 That said, if you want to meet with me before then you're  
7 welcome to write and make the request.

8 So my proposal then is to order that trial take place  
9 on April 9. By doing so, counsel, you should be aware that  
10 that will be a firm date unless I move it forward to the date  
11 in March which, again, is -- seems to be something I cannot  
12 promise and you should not rely on. So do not expect the  
13 April 9 date to change. If I am able to change it, I'll change  
14 it in the course of the next week.

15 Now, Mr. Chow, just a note for your benefit. If any  
16 circumstances arise and you want or need to change counsel, for  
17 example, if you want to obtain other counsel or if you become  
18 eligible for appointed counsel, you should -- because you  
19 cannot afford counsel, it's crucial that you let me know that  
20 as soon as possible. I say that because a lawyer needs  
21 adequate time to prepare for trial and the date that I've just  
22 scheduled for trial is not going to move back in time. It may  
23 move forward in time. So if you wait until before the trial  
24 date in order to request replacement of counsel I may not grant  
25 your application and, therefore -- or I may grant it and your

HB89CHOC

1 new lawyer may not have enough time to prepare for trial. So  
2 if you are considering that, please raise it as soon as  
3 possible with me.

4 Good. Is there any anything else we should address  
5 before we come to the Speedy Trial Act?

6 MR. KOBRE: Not from the government your Honor.

7 THE COURT: Thank you, counsel.

8 MR. CANELLOS: Your Honor, there's one issue about  
9 what I think is a minor proposed modification of the existing  
10 bail package.

11 I've discussed it with the government but I haven't  
12 heard their response. So we have always had bail packages on  
13 consent here. And when Mr. Chow was originally arrested in his  
14 home in the Northern District of California, we agreed to  
15 provide the government with not just Mr. Chow's passport, which  
16 is not controversial, but also the passport of his wife and two  
17 minor children. Given that we now have a several months lull  
18 between now and trial, it doesn't seem like their travel should  
19 be unsettled by this matter and we would like to, hopefully  
20 with the government's consent, get the passports back for the  
21 wife and two children.

22 The one other issue is, if your Honor's prepared to  
23 accommodate it, it would be helpful for us to have nationwide  
24 travel for Mr. Chow. Right now he can travel to a number of  
25 districts but not all districts. And just having unfettered

HB89CHOC

1 travel within the United States would be helpful.

2 THE COURT: Thank you.

3 Can I ask counsel for defendant: Do you have the  
4 views of the pretrial services officer with respect to either  
5 of those requests?

6 MR. CANELLOS: We do not.

7 THE COURT: United States, what's your view?

8 MR. KOBRE: Your Honor, so I first learned of this  
9 request just right before we began the conference. I think,  
10 your Honor, the government is inclined to -- and again I think  
11 the views of pretrial services would be helpful to the  
12 government as well.

13 THE COURT: Thank you. Let me do this. Counsel for  
14 defendant please confer with the United States. Please discuss  
15 the request with Mr. Chow's pretrial services officer. Write  
16 me with your request. Include in your letter the positions of  
17 the United States and the pretrial services officer with  
18 respect to the request. And I will act on the letter.

19 MR. CANELLOS: That's fine. Thank you, your Honor.

20 THE COURT: Good. Thank you.

21 United States, is there -- first, can you tell me  
22 where we are with respect to the speedy trial clock?

23 MR. KOBRE: Yes, your Honor.

24 So I believe, your Honor, we've lost two days. The  
25 clock ran on October -- the indictment was returned on

HB89CHOC

1       October 30. And so October 30 and 31 are days when time had  
2       not been excluded. But your Honor, by an order dated  
3       November 1, excluded time through today. So we have 68 days  
4       remaining.

5               THE COURT: Thank you very much. Does the government  
6       have an application?

7               MR. KOBRE: We do, your Honor. The government moves  
8       to exclude time under the Speedy Trial Act from today through  
9       April 9, 2018 and that would be for the defense to receive and  
10       review the discovery, consider the possibility of making any  
11       motions and to enable defense counsel to effectively prepare  
12       for trial.

13               THE COURT: Thank you.

14               Counsel for defendant, what's your view?

15               MR. CANELLOS: So the April 9 trial date is fine as  
16       long as that holds I don't think we have any other concerns,  
17       but wouldn't it be more sensible, just to keep a tight  
18       schedule, recognizing Mr. Chow's speedy trial rights, to just  
19       exclude time between now and the next scheduled conference?

20               THE COURT: Thank you.

21               I would be happy to accommodate that although I wasn't  
22       planning to set an intervening conference. I can do so,  
23       however, if you like.

24               Do you think that we need an intervening conference to  
25       discuss anything before the final pretrial conference? I know

HB89CHOC

1 it's difficult to predict. I was going to schedule a hearing  
2 date but it's not apparent to me that there will necessarily be  
3 a need for a hearing here.

4 MR. CANELLOS: We will most likely have some motions.  
5 So maybe if you set a control date for motions and if -- and we  
6 can appear before your Honor and if there is no need for us to  
7 appear before your Honor for -- at that date, we'd be happy to  
8 workout with the government a stipulation of exclusion of time  
9 going forward.

10 THE COURT: Thank you.

11 Is there a day of the week that's more convenient for  
12 Mr. Chow to be in New York?

13 MR. CANELLOS: Avoiding Mondays would be preferable.  
14 Any other day of the week would be fine.

15 THE COURT: Thank you.

16 Let me propose then that we set an interim conference  
17 at which I expect that I would hear any evidence with respect  
18 to any motion that requires a hearing on February 9 at 11 a.m.

19 Does that date and time work for the parties?

20 MR. KOBRE: It does for the government, your Honor.

21 MR. CANELLOS: It does for the defense.

22 THE COURT: Good. Thank you.

23 So I understand the request is that I modify the  
24 government's suggestion that we exclude time through the trial  
25 date to the request that we exclude time through the

HB89CHOC

1 February 9, 2017 conference.

2 Is that correct, counsel?

3 MR. CANELLOS: Yes, your Honor.

4 THE COURT: Thank you. And you consent to the  
5 exclusion of time through that date?

6 MR. CANELLOS: Yes, we do.

7 THE COURT: Thank you.

8 So I'm going to exclude time from today until  
9 February 9, 2018. I find that the ends of justice served by  
10 excluding such time outweigh the best interests of the public  
11 and the defendant in a speedy trial because it will allow time  
12 for production of discovery and review of those materials by  
13 the defendant, time for the defendant to consider and prepare  
14 any motions, and time for the parties to begin to prepare for  
15 trial of this matter.

16 Is there anything else that we should discuss before  
17 we adjourn?

18 Counsel for the United States?

19 MR. KOBRE: No, your Honor.

20 I just wanted to mention with respect to the  
21 discovery, I know defense counsel is already aware of this, but  
22 just to advise the Court that the discovery is -- electronic  
23 discovery in this case includes a fair amount of Chinese  
24 language communications. So often that presents an issue as  
25 far as getting things translated. Obviously it does to the

HB89CHOC

1 government. And defense counsel is already aware of it. But I  
2 just wanted to advise the Court. Other than that, nothing at  
3 all.

4 THE COURT: Thank you, counsel.

5 Counsel for the defendant?

6 MR. CANELLOS: Nothing. Nothing further, your Honor.

7 THE COURT: Thank you very much. This proceeding is  
8 adjourned.

9 (Adjourned)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25